

**Letter of Findings: 04-20150638P**  
**Tax Administration**  
**For The Tax Years 2012 and 2013**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

When Department found that Company overpaid certain tax and also had an outstanding tax liability, the overpayment was required to be applied to Company's outstanding tax liability before being refunded. When the overpayment was a partial payment, it was first applied to penalties and interest owed and then to the tax. The payment made prior to September 15, 2015 was not refundable under the Emergency Rules of the 2015 Amnesty. Company paid the full amount of assessment under protest as a result; its full payment was not an Amnesty payment and could be refunded pursuant to general Indiana law.

### ISSUES

#### **I. Tax Administration - Partial Payments and Application.**

**Authority:** IC § 6-8.1-3-17; IC § 6-8.1-5-1; IC § 6-8.1-8-1.5; IC § 6-8.1-9-1; IC § 6-8.1-9-2; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Miller Brewing Co. v. Indiana Dep't of State Revenue, 903 N.E.2d 64 (Ind. 2009); Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579, 587 (Ind. 2014); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Emergency Rule 15-240(E).

Taxpayer requests that the Department abate interest pursuant to an amnesty program established in late 2015.

#### **II. Tax Administration - Statutory Interest.**

**Authority:** IC § 6-8.1-10-1.

Taxpayer requests that the Department abate the interest.

### STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. Taxpayer is required to file sales tax and withholding tax returns and remit taxes.

In late 2014, the Indiana Department of Revenue ("Department") audited Taxpayer for tax years 2012 and 2013. The audit was concluded in early 2015. The Department's audit assessed Taxpayer additional sales and use tax with statutory interest for 2012 and 2013. The audit also determined that Taxpayer overpaid the withholding tax for the tax year 2013. The Department subsequently refunded the overpayment on July 27, 2015. After the refund check was issued, the Department applied the check to Taxpayer's outstanding liabilities - audit assessments - on August 11, 2015. The check payment was specifically applied to interest. The interest was attributable to Taxpayer's 2012 tax liability which was then currently due. The proposed assessment of the 2012 tax liability was issued August 21, 2015, which stated the remaining balance due.

In July 2015, the Indiana General Assembly enacted a special provision, 2015 Ind. Acts 2959, P.L. 213-2015 § 91 (codified at IC § 6-8.1-3-17(c)) (effective as of July 1, 2015), requiring that the Department establish and implement a tax amnesty program ("Amnesty Program"). The Department promulgated Emergency Rule 15-240(E) (effective July 27, 2015), 20150729 Ind. Reg. 045150240ERA. A letter, dated August 19, 2015, informed Taxpayer the Amnesty information. Another Amnesty letter with more specific information of Taxpayer's

2012 tax liability was sent August 22, 2015.

On September 15, 2015, Taxpayer contacted the Department intending to participate in the Amnesty Program. Taxpayer paid the remaining balance, including the interest on November 12, 2015, and protested the Department's application of its overpayment and requested a refund.

An administrative phone hearing was held during which Taxpayer's representative explained the basis of Taxpayer's protest. This Letter of Findings ensues and addresses Taxpayer's protest. Additional facts will be provided as necessary.

## **I. Tax Administration - Partial Payments and Application.**

### **DISCUSSION**

Pursuant to the audit, the Department assessed Taxpayer additional sales and use tax with statutory interest for 2012 and 2013 tax years. Taxpayer argued that it was entitled to pay a reduced amount of the tax it owed on the 2012 tax liability, resulting in a refund, because it was eligible and intended to participate in the 2015 Amnesty Program. Taxpayer asserted that it was not able to do so because the Department applied its 2013 overpayment to the interest before issuing the assessment for the balance due. The issue is whether the Department erroneously applied Taxpayer's overpayment.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "Each assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014) (citing *UACC Midwest, Inc. v. Indiana Dep't of State Rev.* 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583.

As a general rule, if a taxpayer believes that it has overpaid the tax, the taxpayer is required to timely file a claim for a refund with the Department pursuant to IC § 6-8.1-9-1. In addition, IC § 6-8.1-9-2(a), in relevant part, provides:

If the department finds that a person has paid more tax for a taxable year than is legally due, the department shall apply the amount of the excess against any amount of that same tax that is assessed and is currently due. **The department may then apply any remaining excess against any of the listed taxes that have been assessed against the person and that are currently due . . . . (Emphasis added).**

When a taxpayer "incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment." IC § 6-8.1-10-1. Further, a taxpayer will be responsible for a ten percent penalty when the taxpayer incurs, "upon examination by the [D]epartment, a deficiency that is due to negligence." IC § 6-8.1-10-2.1(a).

Whenever the taxpayer makes a partial payment on its tax liability, the Department is required to apply the partial payment first to any penalty owed by the taxpayer, then to any interest owed by the taxpayer, and finally to any tax liability of the taxpayer. IC § 6-8.1-8-1.5.

Accordingly, a taxpayer is responsible for a ten percent negligence penalty, interest, in addition to the base tax, when the Department determines that the taxpayer incurs a liability. When a partial payment is received, the Department must satisfy any penalties first and then interest. As a result, the unpaid tax continues accruing the interest and the interest may not be waived under IC § 6-8.1-10-1(e).

Emergency Rule 15-240(E) specifically addresses issues concerning the Amnesty Program which began "September 15, 2015, through 8 p.m. on November 16, 2015." Emergency Rule 15-240(E), § 1(c), 20150729 Ind. Reg. 045150240ERA at 1. Section 1(b) explains that "'Amnesty eligible liability' means an unpaid tax liability for a

listed tax that was due and payable for a period ending before January 1, 2013." Id. Additionally, Section 4(f) provides that "[p]ayments received by the department before September 15, 2015, for an amnesty eligible liability are not eligible for the abatement of penalties, interest, costs, or collection fees under Section 5 . . . ." Id. at 2-3.

Section 13 further provides, as follows:

If the department determines:

- (1) An overpayment has been made by a taxpayer during the amnesty period for an amnesty eligible liability; and
- (2) The overpayment was due to a computational error;

The overpayment may be refunded to the taxpayer. If the overpayment is not refunded, it shall be credited to the taxpayer.

Id. at 6.

In this instance, pursuant to the audit, in addition to sales and use tax, the Department imposed statutory interest. The Department did not impose the negligence penalty. The Department also found that Taxpayer overpaid the withholding tax for 2013. Taxpayer claimed that the Department erroneously applied its overpayment to the statutory interest of its 2012 tax liability. As a result, Taxpayer was erroneously excluded from the opportunity to fully participate in the Amnesty Program. To support its protest, Taxpayer further provided additional documentation, including the Department's August 2015 letters.

Upon review, however, Taxpayer's reliance on the August 2015 letters is misplaced. First, pursuant to the audit, the Department determined that Taxpayer overpaid the withholding and also had additional sales and use tax liability in July 2015, before the enactment of the special legislation, which established the Amnesty Program. The Department is required to abide by the statutory mandates concerning tax administration. Taxpayer did not file a GA-110L form requesting a refund of its overpayment pursuant to IC § 6-8.1-9-1(a). Rather, the Department, in an audit, found that Taxpayer had overpaid its withholding tax. IC § 6-8.1-9-2(a) specifically requires that the Department "shall apply the amount of the excess against any amount of that same tax that is assessed and is currently due." Id. The Department "may then apply any remaining excess against any of the listed taxes that have been assessed against the person and that are currently due . . . ." Id. Only "if any excess remains after the [D]epartment has applied the overpayment against the person's tax liabilities," is the Department allowed to refund Taxpayer. Id. The Department properly applied the overpayment to Taxpayer's 2012 tax liability and the amount of the overpayment was less than the full amount of Taxpayer's liability. The overpayment was thus a partial payment, which must be applied to interest pursuant to IC § 6-8.1-8-1.5. Thus, in July 2015, in the absence of the applicable special amnesty statute and the related Emergency Rules, the Department properly followed the statutory requirements every step of the way regarding the overpayment at issue.

In preparing the roll-out of the Amnesty Program, the Department's August 2015, letter stated in relevant part, "Although you are eligible to participate in [the] Amnesty [Program], you are not required to do so and are entitled to protest the audit assessment . . . ." The letter provided Taxpayer general information of the Amnesty Program after the audit. The letter also explained that the "amounts [Taxpayer] paid as part of the [Amnesty Program] cannot later be refunded, and [Taxpayer] forgoes any right to later protest or continue a protest of the underlying assessment. That overpayment at issue was received, August 11, 2015, "before September 15, 2015," and it was a payment for an amnesty eligible liability and thus was "not eligible for the abatement of . . . interest . . . ." Emergency Rule 15-240(E) § 4(f). 20150729 Ind. Reg. 045150240ERA at 2. Only when the Department determines that Taxpayer overpaid "during the amnesty period for an amnesty eligible liability" and "the overpayment was due to a computational error," is the Department permitted to refund an amnesty payment made under the Amnesty Program. Emergency Rule 15-240(E) § 13, 20150729 Ind. Reg. 045150240ERA at 6. Taxpayer's documentation did not demonstrate that a "computational error" occurred. Where the overpayment is a payment under the Amnesty Program, the Department would not be able to refund the overpayment pursuant to the above mentioned statutes and regulations.

Finally, Emergency Rule 15-240(E) § 16(a) states that a "payment by a taxpayer made in anticipation of an audit assessment for a listed tax is not considered an amnesty payment unless the taxpayer is filing an amended return admitting to previous underreporting of a tax liability for the tax period." Id. Taxpayer's documentation showed that it made full payment, under protest, for both 2012 and 2013 audit assessments and did not file "an amended return admitting to previous underreporting of a tax liability for the tax period." Thus, its full payment "is not considered an amnesty payment" and thus the general statute and regulations also apply concerning its request of abatement of interest, discussed in Issue II.

In short, the July 2015 overpayment was a partial payment received by the Department before September 15, 2015, which was not refundable under Amnesty.

### FINDING

Taxpayer's protest of Issue I is respectfully denied.

## II. Tax Administration - Statutory Interest.

### DISCUSSION

The Department's August 19, 2015 letter explained in part that Taxpayer is "entitled to protest the audit assessment . . . ." Taxpayer's documentation also demonstrated that it paid the **full** amount of its tax liabilities, including interest and negligence penalty, **under protest**, which stemmed from the Department's audit—an audit assessment. Thus, Taxpayer's payment here was a "payment . . . made in anticipation of an audit assessment for a listed tax" and it was not an amnesty payment. See Emergency Rule 15-240(E) § 16(a), 20150729 Ind. Reg. 045150240ERA at 6. Taxpayer requested abatement of the interest.

In this instance, Taxpayer's payment under protest was applied to a portion of the interest. As mentioned above in Issue I, statutory interest is mandatory when Taxpayer incurred a deficiency upon a determination by the Department. IC § 6-8.1-10-1(a). The Department does not have the authority to waive the interest. IC § 6-8.1-10-1(e).

### FINDING

Taxpayer's protest of the imposition of the statutory interest is respectfully denied. The interest cannot be waived.

### SUMMARY

Taxpayer's protest of the imposition of statutory interest is respectfully denied.

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